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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No. <b>V-W- '03-C-746</b>
	)	
General Motors Corporation,	)	
Ford Motor Company,	)	ADMINISTRATIVE ORDER BY
Detroit Diesel Corporation,	)	CONSENT PURSUANT TO
Rouge Steel Company,	)	SECTION 106(a) OF THE
SRS Environmental (a/k/a Sybill, Inc.),	)	COMPREHENSIVE
and Chapter 7 Bankruptcy Trustee for	)	ENVIRONMENTAL RESPONSE,
V.C. Madias,	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
Respondents	)	as amended, 42 U.S.C.
	)	§ 9606(a)
	)	

**I. JURISDICTION AND GENERAL PROVISIONS**

This Consent Order is being entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents General Motors Corporation ("GM"), Ford Motor Company, Detroit Diesel Corporation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.) and the Chapter 7 Bankruptcy Trustee for V.C. Madias ("Respondents"). The Consent Order is being issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Consent Order provides for Respondents' performance of removal actions and for reimbursement of oversight costs not inconsistent with the National Contingency Plan (NCP) incurred by the United States at the Sybill, Inc. (a/k/a SRS Environmental) Site located at 111 Military Street in Detroit, Wayne County, Michigan ("Sybill," "facility" or "Site"). The geographic coordinates of the Site are latitude 42°18.300' N and longitude 83°06.000' W. This Consent Order requires the Respondents to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site, as found by U.S. EPA.

U.S. EPA has notified the State of Michigan of this Consent Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and will also provide the State a copy of this Consent Order.

U.S. EPA and Respondents recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the findings of facts, conclusions of law, and determinations in Sections III and IV of this Consent Order. Respondents agree to comply with and be bound by the terms of this Consent Order and further agree that they will not contest the basis or validity of this Consent Order or its terms.

## **II. PARTIES BOUND**

This Consent Order applies to and is binding upon U.S. EPA, and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Consent Order. U.S. EPA asserts that Respondents are jointly and severally liable for carrying out all activities required by this Consent Order, except for those activities designated to a specific Respondent. Compliance or noncompliance by one or more Respondents with any provision of this Consent Order shall not excuse or justify noncompliance by any other Respondents.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Consent Order. Respondents shall be responsible for any noncompliance with this Consent Order.

## **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, U.S. EPA finds that:

1. The Site is located in a mixed industrial and residential area and is comprised of an approximately 15-acre parcel split by Military Street.
2. Presently, the Site has an office building, a pump house, a water tower, two parking areas, and 26 (5 outdoor and 21 indoor) above ground storage tanks (ASTs).
3. Formerly, the Sybill facility functioned as a water treatment facility for the City of Detroit. The facility eventually began to function as a waste oil processing plant, filling the on-site ASTs and clarifiers with waste oil and waste products from industries. The Detroit Water and Sewerage Department and Michigan Department of Environmental Quality (MDEQ) cited the facility with various regulatory violations during its operation as a waste oil recycling/recovery processing facility. In June 2001, due to regulatory violations, city-issued operating permits

were revoked, and all utility services to the facility were terminated. In August 2001, V.C. Madias, president and sole shareholder of SRS Environmental filed for bankruptcy and closed the facility.

4. With Mr. Madias' consent and cooperation, General Motors and Rouge Steel Company conducted removal activities at the facility from November, 2001 through March 2002, removing and properly disposing of approximately 1.3 million gallons of low pH wastewater, oily wastewater and waste oil from tanks and containment areas.

5. On 10 and 13 May 2002, U.S. EPA investigated the Site as a part of the investigation pertaining to an oil spill on the River Rouge, which occurred in early April 2002. Based on the results of this investigation, the samples collected at the Site did not match the materials released in the April 2002 oil spill.

6. U.S. EPA conducted another investigation of this Site in October 2002. This assessment documented the presence of uncontrolled toxic, corrosive, and ignitable substances in abandoned, vandalized and leaking tanks at the Site. During this site assessment, government inspectors observed and documented the poor condition of on-site buildings and structures, as well as the poor condition of on-site drums and containers. Evidence of a historic waste oil spill was found in one of the on-site parking areas near a sewer manhole. The facility gates were unlocked/vandalized and containers of hazardous materials on the Site were open, thereby making their contents easily accessible to vandals, scavengers and trespassers. U.S. EPA's continuing efforts to secure the Site have been unsuccessful.

7. During U.S. EPA's October 2002 assessment, inspectors noted the presence of an ash pit in the boiler house containing waste oil, oily water, and sludge. In addition, the threat of fire or explosion was documented at the Site by U.S. EPA inspectors due to the presence of drums, tanks and cylinders labeled flammable substances.

8. In addition to the field observations and results of field screening of the oil and waste liquids, during the October 2002 assessment U.S. EPA collected waste oil samples and samples from other waste products present at the Site. The sampling results indicate the presence of RCRA characteristic toxic, corrosive and ignitable/combustible hazardous substances, waste oil, and waste oil mixed with hazardous substances at the Site.

9. Based upon the October 2002 assessment and the laboratory analyses and container labeling, U.S. EPA estimates that approximately 26,000 gallons of flammable, combustible, or corrosive hazardous wastes in drums, totes, or containers, 30 tons of solid waste contained in a roll off bin located on the Site, contaminated materials in the ash pit, and 28 compressed gas cylinders are present on the Site. Also, Toxicity Characteristic Leaching Procedure (TCLP) Volatile Organic Compounds (VOCs) such as hexane and acetone or TCLP Semi-volatile Organic Compounds (SVOCs) containing waste, above the removal action levels, are documented to be present in drums, totes and ASTs. Additionally, based on the sampling results, U.S. EPA estimates approximately 450,000 gallons of waste oil is being stored at the Site.

10. The conditions at the Sybill Site present an imminent and substantial threat to the public health, or welfare, and the environment, and meet the criteria for an emergency removal action provided for in the National Contingency Plan (NCP), Section 300.415, Paragraph (b)(2), 40 CFR § 300.415(b)(2)(i), (ii), (iii), (v), and (vi), (vii), respectively.

In order to protect human health and welfare and the environment, it is necessary that action be taken to contain and terminate this threat of release of waste oil and hazardous substances from the Site to the environment.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the findings of fact in Section III above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

1. The Sybill Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Each Respondent is "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
3. Respondents sent waste material to the Sybill Site for reclamation and disposal. U.S. EPA alleges the Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
4. Flammable, combustible, or corrosive hazardous waste present at the Site in drums, totes or containers, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
5. The conditions described in the Findings of Fact above constitute a potential or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22). The actual or threatened release of hazardous substances at the Site may present an imminent and substantial endangerment of the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA.
6. The removal action required by this Consent Order is necessary to protect human health and the environment and to abate, minimize, stabilize, mitigate or eliminate the release or threat of a release of hazardous substances at or from the facility. The Action Memorandum for this Site, attached hereto and dated February 18, 2003, sets out U.S. EPA's specific findings supporting this determination.
7. The Respondents are liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for the removal costs not inconsistent with the NCP incurred by the United States in connection with the October 2002 assessment of the facility and subsequent direct and indirect costs associated with the removal required by this Consent Order.

8. The removal action required by this Consent Order, if properly performed under the terms of this Consent Order, is consistent with the NCP.

## **V. CONSENT ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondents shall **comply** with the following provisions, including but not limited to all provisions in documents **attached** to or incorporated into this Consent Order, and perform the following actions:

### **1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

Respondents shall perform the removal actions required by this Consent Order themselves or retain a contractor to implement the removal actions. Respondents have retained Altech Environmental Consulting, Ltd. (Altech) as Project Coordinator to oversee the removal work and Conestoga-Rovers & Associates ("CRA") as Project Contractor. U.S. EPA has accepted Altech as the Respondents' Project Coordinator and CRA as the Project Contractor, but retains the right to disapprove of changes to the Project Coordinator or Project Contractor in the course of this Consent Order. If U.S. EPA disapproves either the Project Coordinator or Project Contractor, Respondents shall propose a different Project Coordinator or Project Contractor (as the case may be) within 10 business days following receipt of U.S. EPA's written disapproval, including a description of the basis for disapproval, and shall notify U.S. EPA of that Project Coordinator's or Project Contractor's name and qualifications within 10 business days of U.S. EPA's disapproval.

Respondents have designated as Project Coordinator Ian Kerr of Altech for administration of all the Respondents' actions required by the Consent Order. To the greatest extent possible, the Project Coordinator or his designee shall **be present** on-site or readily available during site work. Receipt by Respondents' Project Coordinator or his designee of any written notice or communication from U.S. EPA relating to this Consent Order shall constitute receipt by Respondents. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents.

The U.S. EPA has designated Brian Kelly of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Consent Order to the United State Environmental Protection Agency, OSC Brian Kelly (SE-GI), at 9311 Groh Road, Grosse Ile, Michigan, 48138, by certified or express mail. Respondents shall also send a copy of all submissions to Thomas Martin, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

U.S. EPA and Respondents shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in

no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

## **2. Work to Be Performed**

### **2.1 Work Plan and Implementation**

Respondents have submitted to U.S. EPA for approval, and U.S. EPA has approved, a Site-specific Site Assessment and Removal Work Plan [including a Sampling and Analysis Plan ("SAP") and a QAPP] ("Work Plan") for performing the removal activities at the Site, along with the Health & Safety Plan (HSP) described below. The approved Work Plan and schedule, attached hereto as Attachment A, the HSP, and any subsequent modifications to either plan are incorporated into and shall be fully enforceable under this Consent Order.

Starting no later than 7 days after the effective date of this Consent Order, Respondents shall initiate the removal action specified in the Work Plan in accordance with the schedule contained therein. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan. Respondents shall not commence or undertake any removal actions at the Site that are not in accordance with the attached Work Plan approved by U.S. EPA.

### **2.2 Site Security**

Respondents shall employ their best efforts to keep the Site secure from trespassers, employing such efforts until this Consent Order is closed out pursuant to Section XVII of this Consent Order and the provisions of the Work Plan attached hereto. Such efforts shall include but not be limited to hiring a private security company to conduct several drive by inspections of the Site during time frames in which removal crews are not present at the Site. It shall also include development and implementation of a Health and Safety Plan and a contingency plan to contact local authorities and fire personnel to help address fires or other disturbances at or of the Site. In providing security for the Site Respondents shall ensure that all locks, fences, doors, and other barriers to entry to the Site are effective and maintained. When Respondents' representatives are not on-site, all doors inside the facility fence line shall be kept closed and, to the extent possible, locked. If trespassing and vandalism are recurrent at the Site, Respondents shall install additional barriers to building windows and doors. At the end of active removal activities on Site, Respondents shall leave all barriers to Site entry in place and board all first floor windows and doors that may become entry points.

### **2.3 Health and Safety Plan**

Respondents shall comply with the Health and Safety Plan approved by U.S. EPA on April 10, 2003.

### **2.4 Sampling and Analysis Plan**

Respondents shall comply with the Sampling and Analysis Plan appended to the U.S. EPA approved Workplan, which is attached hereto as Attachment A.

Upon request, U.S. EPA or its authorized **representatives** may take split and duplicate samples of any samples collected by Respondents or **their** contractor while performing work under this Consent Order. Respondents must notify U.S. EPA at least three business days in advance of any sample collection unless U.S. EPA **agrees** to a shorter notice period. U.S. EPA may take any additional samples that it deems necessary. U.S. EPA must give the Respondents at least three days advance notice of this activity so that it may take split and duplicate samples unless Respondents agree to a shorter notice period. If requested, U.S. EPA shall provide the results of all analysis of such samples to Respondents upon U.S. EPA's receipt of the validated analytic results.

## **2.5 Post-Removal Site Control**

Consistent with 40 CFR § 300.415(k) & (1) and OSWER Directive 9360.2-02 and if requested by the OSC, Respondents shall submit a Post-Removal Site Control Plan for post-removal site control. Upon U.S. EPA approval, the Respondents must implement these controls and upon written request provide U.S. EPA documentation of all post-removal site control arrangements. Until the Site is fully characterized the need for post-removal site control is unknown, but at this time no post-removal site control is anticipated. When U.S. EPA issues its Notice of Completion under Section XVII of this Consent Order, this requirement allowing for the imposition of post-removal site controls **shall terminate**.

## **3. Reporting**

Unless otherwise specified, Respondents must submit all reports and notices this Consent Order requires to:

Brian Kelly (SE-GI)  
On-Scene Coordinators  
U.S. EPA Response Section 1  
9311 Groh Road  
Grosse Ile, MI 48138  
Telephone: (734) 692-7684  
Fax: (734) 692-7677

Respondents must submit weekly written progress reports to U.S. EPA at the end of each one week period commencing within seven days (7) after the effective date of this Consent Order, unless the OSC otherwise directs in writing. These reports will include at minimum those items specified in the Work Plan. The obligation to submit weekly reports terminates when Respondents submit the Final Report required under subsection 4 immediately below.

Respondents SRS Environmental and the Trustee for the Estate of V.C. Madias must give written notice of this Consent Order to any successor in interest at least 30 days prior to transferring ownership of any part of the facility. Respondents SRS Environmental and the

Trustee for the Estate of V.C. Madias also must notify U.S. EPA, the State and all parties to this Consent Order at least 30 days before the transfer, and must include the name and address of the transferee, as well as any petition to abandon the property. Respondents SRS Environmental and the Trustee for the Estate of V.C. Madias must require the transferee to provide access as described in the section titled "Access to Property and Information".

The OSC may present a written request for more frequent reports when the activities at the Site warrant a higher reporting frequency, and, for good cause, Respondents may petition the OSC for less frequent reports.

#### **4. Final Report**

Within 60 calendar days after completing the removal action required under this Consent Order (including receipt of waste manifests and final validated laboratory data), Respondents must submit for U.S. EPA review a final report summarizing the actions taken to comply with this Consent Order. The final report must conform to the requirements at Section 300.165 of the NCP, 40 CFR § 300.165. The final report must include a good faith estimate of total costs incurred in complying with the Consent Order, a list of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a list of the ultimate destinations of those materials, the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documents generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report also must include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true and complete.

#### **5. Access to Property and Information**

Respondents shall provide access to the facility (via SRS Environmental and the Trustee for the Estate of V.C. Madias), to off-site areas where access is necessary to implement this Consent Order, and to all documents related to conditions at the facility and work conducted under the Consent Order. Respondents SRS Environmental and the Trustee for the Estate of V.C. Madias must provide this access to U.S. EPA, United States Coast Guard (USCG), the City of Detroit, United States Fish and Wildlife Service, and the State of Michigan and their contractors and representatives, allowing all of whom to move freely at the facility and appropriate off-site areas to: interview contractors; review Respondents' progress in carrying out the Consent Order; conduct tests, sampling or monitoring which U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data submitted by Respondents to U.S. EPA. These individuals may inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that relate to work performed under the Consent Order. Respondents may request split samples. Respondents may



also request copies of photographs, tapes, videos, or other recorded evidence created by U.S. EPA and releasable under the Freedom of Information Act, 5 U.S.C. § 552. Respondents will notify U.S. EPA in writing if sound recording, camera, or other documentary equipment is being used that is not obvious to U.S. EPA or U.S. EPA's representatives.

If Respondents must go beyond the facility property boundary to perform work required by this Consent Order, Respondents must use **their best efforts** to obtain the necessary access agreements within 14 days of when U.S. EPA or Respondent identifies the need for off-site work. Any access agreement must give U.S. EPA and its representatives access. If Respondents do not obtain the access agreements, it **must** notify U.S. EPA immediately in writing describing its efforts to obtain access. U.S. EPA may, at its discretion, assist Respondents in obtaining access. Respondents must reimburse U.S. EPA for all costs and attorneys fees it incurred in obtaining access.

#### **6. Record Retention, Documentation, Availability of Information**

Respondents shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Consent Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Consent Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondents are required to provide or maintain pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

#### **7. Off-Site Shipments**

All hazardous substances, pollutants or contaminants removed to an off-site commercial facility pursuant to this Consent Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, with the U.S. EPA Off Site Rule, 40 CFR § 300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

#### **8. Compliance With Other Laws**

Respondents shall perform all actions required pursuant to this Consent Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 CFR § 300.415(j). In accordance with 40 CFR § 300.415(j), all on-site actions required pursuant to this Consent Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. U.S. EPA has requested MDEQ provide a list of ARARs and will provide this list to the Respondents.

## **9. Emergency Response and Notification of Discharges**

If any incident, or change in facility conditions causes or threatens to cause a discharge of waste oil or hazardous substances from the facility or an endangerment to the public health, welfare, or the environment, Respondents immediately must take all appropriate actions to prevent, abate or minimize the discharge or endangerment. Respondents also must notify immediately the OSC or, if he is unavailable, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or facility conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondents shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section VII (Reimbursement of Costs).

Respondents must submit a written report to U.S. EPA within seven business days after each discharge or release stating the events that occurred and the measures taken or to be taken to mitigate the discharge or the endangerment the discharge caused or threatened, and to prevent the discharges or releases' recurrence. Respondents must comply with any other applicable notice requirements, including those in Section 103 of CERCLA, 42 U.S.C. § 9603; and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

## **10. Additional Work**

If U.S. EPA or Respondents determine that work consistent with this Consent Order is not included in the Work Plan and is necessary to protect human health or the environment, that party must notify in writing the other party of the additional work deemed necessary and the reasons for the additional work.

Respondents must complete any additional work requested or approved by U.S. EPA according to U.S. EPA's specifications. Respondents must propose and submit a schedule for additional work for U.S. EPA approval. U.S. EPA may modify or determine the schedule for additional work. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XVI.

## **VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC will oversee this Consent Order's implementation. The OSC has the authority under the NCP, 40 CFR § 300.120, including but not limited to:

- (1) remove or arrange for the removal of a release or discharge, and mitigate or prevent a substantial threat of a release or discharge at any time;
- (2) direct or monitor all federal, state and private actions to remove a release or discharge, including the authority to halt, conduct, or direct any work required by the Consent Order
- (3) determine when the removal is complete.

The OSC's absence from the facility will not cause a work stoppage unless the OSC specifically so directs.

## **VII. REIMBURSEMENT OF COSTS**

Respondents must reimburse the United States, upon written demand, for all response costs that are not inconsistent with the NCP that the United States incurs in overseeing and performing work under this Consent Order after the Effective Date of this Consent Order. U.S. EPA may submit bills periodically to Respondents for these costs. These costs will include direct and indirect costs incurred by U.S. EPA, its contractors and other authorized representatives in connection with U.S. EPA's oversight and performance of work under the Consent Order. These costs will be billed under CERCLA account # B54J.

### **Payment of Costs**

Under CERCLA, Respondents shall pay all oversight costs, as defined below, of the United States related to the Site that are incurred after the Effective Date of this Consent Order and are not inconsistent with the NCP. U.S. EPA will send a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incur in overseeing or conducting work under the Consent Order and/or reviewing or developing plans, reports and other items pursuant to this Consent Order or associated with the removal activity required by the Consent Order. U.S. EPA's bill will include an itemized cost summary.

Respondents shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Program Accounting & Analysis Section  
P.O. Box 70753  
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Sybill, Inc. Site" and shall reference the payer's name and address, the U.S. EPA site identification account number (B54J), and the docket number of this Consent Order.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondents' receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other

remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for oversight costs submitted under this Consent Order, if Respondents allege that U.S. EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

#### **VIII. DISPUTE RESOLUTION**

The parties to this Consent Order will use their best efforts to informally and expeditiously resolve all disputes or differences of opinion concerning this Consent Order. The pendency of dispute resolution, however, will not affect the time period to complete work or submittals this Consent Order requires.

If the parties do not resolve the dispute within 10 business days, either party may object in writing. The objection must state the specific points in dispute, the position of the complaining party, the technical basis, and any matter the complaining party considers necessary to resolve the dispute. Within 10 business days of receiving the objection, the other party will respond in writing, stating the basis for its position and including any supporting documents. The parties will attempt to resolve their differences for ten days after receipt of the response. This ten day period may be extended at the sole discretion of U.S. EPA.

U.S. EPA will maintain an administrative record of the dispute, containing the notice of dispute, the response, and supporting documents.

If U.S. EPA concurs with Respondents' position, U.S. EPA will notify Respondents in writing and the parties will modify this Consent Order according to Section XIV (Modification) to include any necessary time extensions or work variances. If U.S. EPA does not concur with Respondents' position, the Division Director of the Superfund Division, Region 5 will resolve the dispute based upon the administrative record and consistent with the NCP and the terms and objectives of this Consent Order. U.S. EPA's decision shall be incorporated into and become an enforceable part of this Consent Order. With exception to the work required by this Consent Order that is the subject of the dispute, Respondents' obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement

that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

Respondents must complete work and reports not affected by the dispute according to the schedule in the Work Plan.

Respondents have the burden of proving that U.S. EPA's position is arbitrary and capricious or inconsistent with this Consent Order and the NCP.

## **IX. FORCE MAJEURE**

Respondents agree to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify U.S. EPA orally within 24 hours after Respondents become aware of any event that Respondents contend constitutes a force majeure, and in writing within 7 business days after Respondents first knew that the event would likely cause such a delay. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Consent Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Consent Order which are not directly affected by the force majeure. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Respondents in writing of its decision.

## **X. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that Respondents fail to fully perform any requirement of this Consent Order in accordance with the schedule established pursuant to this Consent Order under CERCLA as determined in writing by the OSC, Respondents shall be liable as follows:

Respondents shall pay \$500 a day for each day not in compliance with this Consent Order for the first ten (10) days and \$1,500 for each subsequent day of non-compliance with this Consent Order.

Upon receipt of written demand by U.S. EPA, which describes the noncompliance and provides the calculation for the demand, Respondents shall make payment to U.S. EPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Consent Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Consent Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail in their dispute, Respondents shall pay only such penalties as the resolution requires. In its discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

Violation of any provision of this Consent Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties or punitive damages under CERCLA for any violation for which it elects to collect and does collect a stipulated penalty, as provided herein, except in the case of a willful violation of this Consent Order. Notwithstanding any other provision of this Section, U.S. EPA may in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Order. Should Respondents violate this Consent Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Consent Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **XI. RESERVATION OF RIGHTS**

Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal

or equitable relief to enforce the terms of this Consent Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

Nothing in this Consent Order shall limit any rights, remedies or defenses of Respondents, except as specifically addressed in this Consent Order, including but not limited to, rights pertaining to confidential business information and attorney-client privileged information and the right of Respondents to recover any costs incurred in connection with this Consent Order against third parties pursuant to any available legal remedies.

## **XII. OTHER CLAIMS**

This Consent Order does not limit or affect the rights of the parties against any third party, nor does it limit the rights of third parties.

Also, by issuance of this Consent Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Consent Order. Except as specifically provided in this Consent Order each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Consent Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Consent Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

No action or decision by U.S. EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XIII. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Consent Order, upon issuance of the U.S. EPA notice referred to in Section XVII (Notice of Completion), U.S. EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform removal actions agreed to in this Consent Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Consent Order, in consideration and upon Respondents' payment of the costs specified in Section VII of this Consent Order, U.S. EPA covenants not to sue or to take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or any other authority, for recovery of past and oversight costs incurred by the United States in connection with this removal action and this Consent Order. "Past costs" are all costs incurred prior to the Effective Date of this Consent Order, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred with regard to the Site. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurs in overseeing or conducting work under the Consent Order and/or reviewing or developing plans, reports and other items pursuant to this Consent Order or associated with the removal activity required by the Consent Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by of its obligations under this Consent Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the removal activity, future response costs, or this Consent Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Michigan Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XI, but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

#### **XIV. CONTRIBUTION PROTECTION**



With regard to claims for contribution against Respondents for matters addressed in this Consent Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4).

Nothing in this Consent Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Consent Order for indemnification, contribution, or cost recovery.

## **XV. INDEMNIFICATION**

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondents and Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Consent Order. Nothing in this Consent Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on negligent or wrongful action taken solely and directly by U.S. EPA or other United States officials, employees, representatives and contractors (not including oversight or approval of plans or activities of the Respondents). The United States shall give Respondents written notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## **XVI. MODIFICATIONS**

The OSC may modify any plan or schedule in writing, or orally. The OSC must memorialize an oral modification in writing within seven business days; however, the modification will be effective on the date of the OSC's oral direction. Any other requirements of this Consent Order may only be modified in writing by mutual agreement to the parties.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator must submit a written request to U.S. EPA for approval outlining the

proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to the preceding paragraph.

No other informal advice, guidance, or comment of U.S. EPA regarding reports, plans, schedules, or other writing Respondents submit will alter Respondents' obligations to obtain any formal approval this Consent Order requires and to comply with all of the Consent Order's requirements unless it is formally modified.

#### **XVII. NOTICE OF COMPLETION**

When U.S. EPA determines that Respondents have completed all work according to this Consent Order, except for certain continuing obligations (e.g., record retention, payment of costs), U.S. EPA will notify Respondents in writing. If U.S. EPA determines that Respondents have not completed any work according to this Consent Order, U.S. EPA will notify Respondents, identify the deficiencies, and require Respondents to modify the Work Plan if appropriate to correct the deficiencies. Respondents must implement the modified and approved Work Plan and must submit a modified Final Report according to the U.S. EPA notice.

#### **XVIII. SEVERABILITY**

If a court issues an order that invalidates any provision of this Consent Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Consent Order, Respondents shall remain bound to comply with all provisions of this Consent Order not invalidated by the court's order.

#### **XXIV. EFFECTIVE DATE**

This Consent Order shall be effective upon receipt by Respondents of a copy of this Consent Order signed by the Director, Superfund Division, U.S. EPA Region 5. The section "Reimbursement of Costs" under this Consent Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). That Section requires U.S. EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the 30 day public comment period held pursuant to Section 122(i) of CERCLA, U.S. EPA may withhold consent to all or part of Section VII of this Consent Order if comments received disclose facts or considerations which indicate that Section VII of this Consent Order is inappropriate, improper or inadequate. Otherwise, Section VII shall become effective when U.S. EPA issues notice to Respondents that U.S. EPA is not withdrawing from that Section of the Consent Order.

#### **XX. SIGNATORIES**

Each person signing this Administrative Order by Consent certifies that he or she has the authority to sign the Consent Order for the party whom he or she represents and may bind that party to its terms.

**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Detroit Department of Transportation,**

**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.), and Chapter 7 Bankruptcy Trustee for V.C. Madias, Docket No.**

General Motors Corporation

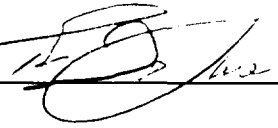
BY: Anthony P. Thubis

DATE: JUNE 16, 2003

TITLE: ATTORNEY

**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.), and Chapter 7 Bankruptcy Trustee for V.C. Madias, Docket No.**

Ford Motor Company

BY:  \_\_\_\_\_

DATE: June 27, 2005

TITLE: Assistant Secretary

**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Detroit Department of Transportation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.), and Chapter 7 Bankruptcy Trustee for V.C. Madias, Docket No.**

Detroit Diesel Corporation

BY: *Jonathan W. Fisher*  
TITLE: *General Counsel*

DATE: *6/13/03*

**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Detroit Department of Transportation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.), and Chapter 7 Bankruptcy Trustee for V.C. Madias, Docket No.**

Rouge Steel Company

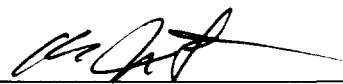
BY: William Elton

DATE: June 19, 2003

TITLE: Senior Vice President

**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Detroit Department of Transportation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.), and Chapter 7 Bankruptcy Trustee for V.C. Madias, Docket No.**

SRS Environmental (a/k/a Sybill, Inc.)

BY: 

DATE: June 16  
03

K. Iin Lim

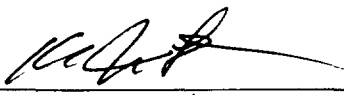
TITLE: TRUSTEE

(Trustee in bankruptcy  
for V.C. Madias,  
its sole shareholder)



**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Detroit Department of Transportation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.), and Chapter 7 Bankruptcy Trustee for V.C. Madias, Docket No.**

Chapter 7 Bankruptcy Trustee for V.C. Madias

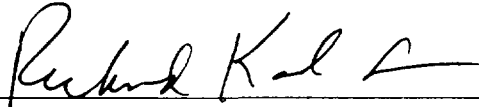
BY:   
K. J. N. Lim  
 TITLE: TRUSTEE

DATE: Jan 16 03

**Administrative Order on Consent In The Matter of: General Motors Corporation, Ford Motor Company, Detroit Diesel Corporation, Detroit Department of Transportation, Rouge Steel Company, SRS Environmental (a/k/a Sybill, Inc.), and Chapter 7 Bankruptcy Trustee for V.C. Madias, Docket No.**

IT IS SO ORDERED AND AGREED:

BY: \_\_\_\_\_



William E. Muno, Director  
Superfund Division  
United States Environmental  
Protection Agency, Region 5

DATE: 7-17-03